Suffield Academy *and* International Brotherhood of Teamsters, Local Union 559, AFL–CIO. Cases 34–CA–7798, 34–CA–7973, and 34–CA–8127

September 30, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On July 22, 1998, Administrative Law Judge Wallace J. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief to the General Counsel's answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt the recommended Order as modified below.[2]

The judge found that the Respondent violated Section 8(a)(5) and (1) by, inter alia, withdrawing its tentative agreement to provide health coverage through the Teamsters' A-Plus plan. Contrary to our concurring colleague, in adopting this finding we adhere to *Driftwood Convalescent Hospital*, 312 NLRB 247, 252 (1993), enfd. sub nom. *NLRB v. Valley West Health Care,* 67 F.3d 307 (9th Cir. 1995). In that case, the Board, quoting *Mead Corp. v. NLRB*, 697 F.2d 1013 (11th Cir. 1983), stated that "the law is settled that '[t]he withdrawal of a proposal by an employer without good cause is evidence of a lack of good faith bargaining by the employer in violation of Section 8(a)(5) of the Act where the proposal has been tentatively agreed upon. . . .'" Here, we find that the judge properly applied this well-settled principle in finding that the Respondent's withdrawal from the tentative agreement violated Section 8(a)(5) and (1).[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Suffield Academy, Suffield, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(a) and 2(c).

"(a) Reinstate and offer to the Union the revised collective-bargaining proposal memorialized by the parties on July 23, 1997, including the tentative agreement to provide the Union's health insurance plan to unit employees, and afford the Union 30 days to accept that pro-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362(3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has also excepted to the judge's statement that it provided no reason for withdrawing from the tentative agreement on health insurance for bargaining unit employees until August 4, 1997. Although the judge is correct that the Respondent provided its reasons for withdrawal in writing on that day, the Respondent's bargaining representatives had told the Union representatives, on July 30, 1997, that it "would rather put the additional funds it would have to spend for the Teamsters' health and welfare benefit plan into increased wages for bargaining unit employees."

[2] We agree with the judge that restoration of the status quo ante prior to the Respondent's unlawful conduct can be best achieved by requiring that the Respondent reinstate the tentative agreement to provide the Union's health insurance plan to unit employees unlawfully withdrawn on July 23, 1997. *Health Care Services Group,* 331 NLRB No. 49 (2000). We shall, however, amend the judge's remedy and modify his recommended Order in three respects.

First, we shall delete from the recommended remedy and existing par. 2(c) of the recommended Order the requirement that the bargaining period be extended for 6 months under *Mar-Jac Poultry Co*., 136 NLRB 785, 787 (1962). Under *Mar-Jac,* the Board may extend the 1-year certification period to compensate for the failure of an employer to bargain in good faith during that time period. In the present case, however, there are no findings that the Respondent refused to bargain in good faith, or engaged in any other violations of the Act, within 1 year of the Union's March 20, 1996 certification. Instead, we shall order the Respondent to maintain the revised collective-bargaining proposal memorialized by the parties on July 23, 1997, including the tentative agreement to provide the Union's health insurance plan to unit employees, for a reasonable period from the date the proposal is formally offered to the Union. See, e.g., *Den-Tal-EZ, Inc*., 303 NLRB 968 fn. 2 (1991), enfd. 986 F.2d 1409 (3d Cir. 1993) (Table). In this way, the Union will be afforded an appropriate period in which to respond to the proposal as it existed before the Respondent's unlawful conduct. As in *Den-Tal-EZ*, we find that a reasonable time for the Union's consideration of the proposal would be 30 days from the time the restored proposal is offered to the Union, absent unusual circumstances. Accord: *TNT Skypak, Inc*., 328 NLRB 468 (1999), enfd 208 F.3d 362 (2d Cir. 2000) (same).

Second, we shall add a remedy and insert in the recommended Order a new par. 2(c) requiring the Respondent to rescind its unlawful subcontracting of unit work to restore the status quo ante. See, e.g., *Davis Electric Wallingford* Corp., 318 NLRB 375, 388 (1995).

Third, we shall substitute July 23, 1997, the date of the Respondent's first unfair labor practice, for March 17, 1997, the date of the charge, in par. 2(d) of the recommended Order. *Excel Container*, 325 NLRB 17 (1997).

[3] The judge cited another case applying the same principle, *Transit Service Corp*., 312 NLRB 477, 483 (1993), rather than *Driftwood*.

posal or to make counterproposals in light of changed circumstances."

"(c) Rescind its decision to subcontract unit work."

2. Substitute the following for the date in the last sentence in paragraph 2(d).

"July 23, 1997."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. September 30, 2001

Wilma B. Liebman, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN HURTGEN, concurring.

I agree with my colleagues that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing from its tentative agreement to provide health coverage through the Teamsters' A-Plus plan, after having just signed a tentative agreement to provide that insurance. However, I reach that conclusion not on the basis that the Respondent lacked "good cause" for withdrawing from the tentative agreement, but rather because the Respondent acted in bad faith.

In *Driftwood Convalescent Hospital*, 312 NLRB 247, 252 (1993), the Board concluded that if an employer withdraws a proposal on which tentative agreement has been reached, and substitutes therefore a regressive proposal, such conduct has the inevitable and foreseeable effect of obstructing and impeding the collective-bargaining process. Therefor, the Board concluded, withdrawal from a tentative agreement by an employer "without good cause" is evidence of a lack of good-faith bargaining by the employer in violation of Section 8(a)(5) and (1) of the Act. Under the reasoning in *Driftwood*, the controlling question is *not* whether the employer acted in good faith in view of all the circumstances,[1] but whether it had good cause to withdraw from a tentative agreement.[2] In my view, the *Driftwood* standard of "good cause" imposes a burden upon an employer that is not permitted by the Act.

Section 8(d) of the Act requires that the parties in collective bargaining "meet at reasonable times and confer in good faith." The essential element of bargaining in good faith is "the serious intent to adjust differences and to reach an acceptable common ground." *White Cap, Inc.*, 325 NLRB 1166, 1169 (1998). Therefore, good faith is demonstrated by conduct consistent with a desire to reach agreement.[3]

The parties are not required to agree to any particular proposal or to make concessions.[4] The Board has no authority to order the parties to agree to any particular proposal.[5] Neither does the Board have the authority to govern the "give and take" of proposals at the bargaining table, except to the extent that such conduct demonstrates a lack of good faith.[6] The question of whether a party has bargained in good faith must be determined by examining the totality of the employer's conduct, not just isolated aspects of it. See, e.g., *Logemann Bros. Co.,* 298 NLRB 1018, 1020 (1990).

Withdrawal of a proposal or a tentative agreement may be simply a matter of "hard bargaining," a right protected by the Act, so long as it is done in good faith. See *Logemann Bros.,* supra. By imposing a standard of "good cause" to determine whether the withdrawal from a tentative agreement violates Section 8(a)(5), the Board has intruded into the bargaining process and has imposed a standard greater than that of simple good faith. That is, the Board takes it upon itself to judge whether there was "good cause" for the withdrawal. In my view, the Board cannot second-guess an employer's basis for withdrawing from the tentative agreement. The Board, at most, can only consider whether that withdrawal was part of a larger effort to subvert the bargaining process.

In sum, withdrawal of proposals or tentative agreements should be analyzed under a traditional good-faith analysis. Either party, therefore, may withdraw from a tentative agreement so long as it does not do so in bad faith.

[1] See *TNT Skypak, Inc*., 328 NLRB 468 (1999) ("In determining whether a party has bargained in good faith or bad, the Board looks to the totality of the circumstances.").

[2] See *Driftwood*, 312 NLRB at 252 ("the issue here is not whether the Respondent acted in good faith, but whether the Respondent had good cause in unilaterally withdrawing from tentative agreements and concessions made").

[3] See, e.g., *Public Service Co. of Oklahoma (PSO)*, 334 NLRB No. 68 (2001) (Good-faith bargaining "presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract.").

[4] See *NLRB v. American National Ins. Co.*, 343 U.S. 395, 402 (1952) ("The Act does not compel any agreement whatsoever between employees and employers."); 29 U.S.C. § 158(d) (the obligation to bargain collectively "does not compel either party to agree to a proposal or require the making of a concession").

[5] See *H.K. Porter Co, v. NLRB*, 397 U.S. 99, 102 (1970) ("while the Board does have power under the National Labor Relations Act . . . to require employers and employees to negotiate, it is without power to compel a company or a union to agree to any substantive contractual provision of a collective-bargaining agreement").

[6] See generally, *American National Ins. Co.*, supra, 343 U.S. at 409 (Board does not sit in judgement on substantive terms of collective bargaining agreements).

In order to prove that a respondent's withdrawal constitutes bargaining in bad faith in violation of the Act, the General Counsel must establish a prima facie case by showing that the respondent has withdrawn from a tentative agreement. If the General Counsel meets his burden, the respondent must then show a reason for withdrawing from the tentative agreement. Since the respondent is the actor, it is reasonable to impose on it the burden of explaining its action. However, as noted above, the reason need not satisfy a "good cause" standard.

If the respondent meets its burden, the General Counsel can then rebut the respondent's explanation by showing it to be pretextual. If the General Counsel succeeds, the Board may find that the respondent has bargained in bad faith in violation of Section 8(a)(5). For, if the asserted reason is pretextual, there is then no legitimate reason for the withdrawal from the tentative agreement, and one can reasonably infer that the respondent was seeking to avoid reaching an agreement. The ultimate question to be resolved by the Board always remains whether the respondent bargained in good faith, i.e., whether the respondent's action in light of all the circumstances was consistent with a desire to reach an ultimate agreement.

In the instant case, the judge concluded that the withdrawal was a "clear act of bad faith bargaining," noting that it is rare "to encounter employer conduct so blatant" as that of the Respondent. I agree that the Respondent has failed to bargain in good faith.

The head of the Respondent's bargaining team, Gerald Laplante, said early in the negotiations that the Teamsters' health plan looked attractive because the costs were fixed and the plan provided dental coverage. The tentative agreement to adopt the Teamsters' plan was contained in all of the documents exchanged by the parties over more than 7 months of bargaining. On July 23, 1997, after first initialing all provisions, including the provision for the Teamsters' health plan, to which the parties had tentatively agreed, the Respondent's negotiators caucused. They then returned to the table and the Respondent's attorney, Emmanual Psarakis, who served as the Respondent's chief spokesperson, without any explanation, advised that the Respondent was changing its position on the health care plan and proposed providing the unit employees with the Respondent's plan.

On July 30, Psarakis discussed the Respondent's position on wages and several other issues. He advised the Union that he could not discuss the Respondent's decision to withdraw from its tentative agreement on the health insurance because General Manager LaPlante was not present. The Respondent provided no explanation for its withdrawal until August 4, nearly 2 weeks after the withdrawal from the tentative agreement. The Respondent then explained that its withdrawal was "essentially because of substantial changes in [the Respondent's] position as regards wages, and agreements to other Union proposals." Yet, there was no evidence provided at the hearing that there was any substantial change in the Respondent's position. Nor was it shown that any money would actually be saved by the Respondent by rejecting the Teamsters' plan in favor of Respondent's plan.

Concededly, the Respondent offered the unit employees the same 2.5 percent increase authorized by the board of trustees and given to nonunit employees in both July 1996 and 1997. But, this was offered both before and after the withdrawal from the tentative agreement. Thus, there was no change.[7] The judge found that the amount of the increase was no more than the Respondent would have given the unit employees had they chosen not to organize. Further, Respondent did not in fact give raises to the members of the bargaining unit.

The Respondent also asserted that its withdrawal was part of a "revised package proposal." Yet, as discussed, the judge found that the Respondent failed to provide evidence of a "single significant change in position."

In sum, as the judge concluded, the Respondent's withdrawal "was given without reason, explanation, and without any contemporaneous change in any of its positions on any remaining open issue. I believe and find that the sole motivation for withdrawing its previous acceptance of the Union's health plan was to frustrate the bargaining process and make it impossible to reach agreement on a contract."

[7] It was the Respondent's longstanding custom to give all employees an across-the-board increase authorized by the board of trustees on or about July 1 of each year. The Respondent's proposal, prior to August 4, 1997, was characterized as "business as usual." It provided that the bargaining unit members would receive the same annual raise, if any, given by the board of trustees on July 1 each year to all hourly employees. In addition, there was a provision for merit pay. This raise would have been 2.5 percent in both 1996 and 1997, the amount authorized by the board of trustees and given to all hourly employees, except those in the unit.

On August 4, 1997, the Respondent offered to pay the bargaining unit members a lump sum equal to the 2.5 percent raise given to all hourly employees in 1996, and to give the unit members retroactively the 2.5 percent raise given by the board of trustees to all hourly employees in July 1997. This offer gave the unit no more than they would have received had they not been organized, or had the Respondent's pre-August 4 proposal been adopted. The only change in the Respondent's position was that it offered to guarantee the bargaining unit a minimum raise of 2.5 percent in the third year of the agreement. However, given the Respondent's history of giving annual raises averaging 2.5 percent to all hourly employees, there is no evidence that the offer would increase the Respondent's costs so as to justify withdrawal of the tentative agreement on health insurance.

The General Counsel has proved that the health plan tentative agreement was withdrawn after months of being contained in the documents exchanged by the parties. The Respondent's explanation for withdrawing the tentative agreement, not provided until nearly 2 weeks after the withdrawal, is shown to be a pretext. The judge concluded that the real reason for the change was to frustrate the bargaining process. I find, therefore, by withdrawing the health insurance tentative agreement the Respondent has failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act.

Dated, Washington, D.C. September 30, 2001

Peter J. Hurtgen, Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain in good faith with the International Brotherhood of Teamsters, Local Union 559, AFL–CIO, by withdrawing from our tentative agreement to accept the Union's health insurance plan for our employees in the following described unit:

All full-time and regular part-time service and maintenance employees employed by us at our facility; but excluding cafeteria employees, office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to bargain in good faith with the Union by subcontracting unit work without affording the Union an opportunity to bargain over this issue and without reaching lawful impasse in negotiations.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL reinstate and offer the Union the revised collective-bargaining proposal memorialized by the parties on July 23, 1997, including the tentative agreement to provide the Union's health insurance plan to unit employees, and WE WILL afford the Union 30 days to accept that proposal or to make counter-proposals in light of changed circumstances.

WE WILL rescind our decision to subcontract bargaining unit work.

WE WILL, upon request, bargain in good faith with the Union in the unit described above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and if an understanding is reached, WE WILL embody such understanding in a signed agreement.

SUFFIELD ACADEMY

Jennifer F. Creaturo, Esq., and *Thomas E. Quiqley, Esq.,* for the General Counsel.

Emanuel N. Psarakis, Esq., and *Lisa Gizzi, Esq.,* of Hartford, Connecticut for the Respondent-Employer.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Hartford, Connecticut, on March 4 and 5, 1998.[1] International Brotherhood of Teamsters, Local Union 559 AFL–CIO (the Union) filed a charge in Case 34–CA–7798 on March 17, 1997, and filed an amended charge in this case on June 20, 1997. It filed a charge in Case 34–CA–7973 on August 11 and subsequently filed a charge in Case 34–CA–8127 on November 20. Based on these charges the Regional Director for Region 34 issued complaints in each case, ultimately issuing an Order consolidating complaints and notice of hearing on January 14, 1998. The consolidated complaint (the complaint) alleges that Suffield Academy (Academy or Respondent) engaged in conduct in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Suffield Academy, a corporation, engages in the operation of a private school providing secondary school education at its facility in Suffield, Connecticut. Respondent admits the jurisdictional allegations of the complaint and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a

[1] All dates are in 1997 unless otherwise indicated.

labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues for Determination

Suffield Academy has long engaged in providing private secondary school education at its facility in Suffield, Connecticut. On March 20, 1996, the Union was certified by the Board as the exclusive collective-bargaining representative of the following unit of Respondent's employees:

> All full-time and regular part-time service and maintenance employees employed by Respondent at its facility; but excluding cafeteria employees, office clerical employees, and guards, professional employees and supervisors as defined in the Act.

At various times during the months of June 1996 to August 1997, Respondent and the Union met for the purpose of negotiating an initial collective-bargaining agreement. During this timeframe the Respondent is alleged to have violated the Act by: (1) since about February 20, 1997, failing and refusing to reduce to writing and provided the Union with a revised schedule of projected unit-wage increases and with proposed contractual language relating to unit-merit wage increases; (2) from about April 23, 1997, to about June 12, 1997, failing and refusing to meet with the Union for the purpose of face-to-face negotiations; and (3) about July 23, 1997, withdrawing from a tentative agreement providing for the conversion of the unit employees' health plan to the Teamsters' A-Plus health insurance plan.

The complaint further alleges that Respondent violated the Act by subcontracting unit work consisting of the cleaning of classrooms and administrative offices without first giving notice to the Union and affording the Union an opportunity to bargain over this decision and its effects on the unit employees.

During most of the negotiations, Respondent's representative and spokesperson was its business manager, Gerald LaPlante. In the final negotiating sessions from June 12 to August 26, Respondent was represented by Attorneys Emanuel Psarakis and Lisa Gizzi, as well as by LaPlante. The Union's bargaining committee consisted of Business Agent Tom Gilmartin, who was the Union's spokesperson, Vice President John Luppachino,[2] recording secretary Roy Sullivan, and unit employee Richard Krazia. After Krazia resigned his employment in September 1996, unit employee Bill Tromley began attending the bargaining sessions.

Respondent and the Union commenced negotiations with the understanding that (1) all subject matter agreements were tentative pending overall agreement on a full collective-bargaining agreement, (2) negotiations would take place at the bargaining table and not in the media, and (3) the collective-bargaining agreement would be subject to approval by Respondent's board of trustees and by the unit membership.

Gilmartin testified that the Union's core bargaining objectives focused on improving unit employees' health insurance and eliminating the cost to employees for Respondent's health insurance; preserving unit work and limiting Respondent's ability to subcontract; providing employees with a voice in the workplace through grievance rights; and improving wages and addressing Respondent's absolute discretion over wage increases.

Respondent initially proposed that the parties sign off on each separate contract article or section when agreement was reached. Gilmartin, however, declined this procedure because it was his practice in contract negotiations that the parties would exchange contract proposals with each revision reflecting where agreement had been reached. Once agreement was reached on all issues, Gilmartin's practice was to sign off on a memorandum of understanding evidencing the parties' complete agreement. This was the practice followed by the parties during the course of negotiations, to wit, Respondent and the Union exchanged contract proposals and each subsequent revision reflected where agreement was reached by the parties. On July 23 the parties signed a document reflecting tentative agreements.

Negotiations began on May 2, 1996, and continued until August 26, 1997, at which time the parties agreed to suspend negotiations pending resolution of the instant litigation. Negotiations broke down on the issues of Respondent's withdrawal from its tentative agreement to provide the Teamsters' health insurance to unit employees and over Respondent's decision to subcontract certain unit work under the wording of the parties' tentative agreement regarding the "Management's Rights" clause.

By the last negotiating session, the parties had reached tentative agreement on all issues except health insurance, Respondent's right to subcontract, and a zipper clause. Notably, the final tentative agreements reached by the parties are nearly identical to the Respondent's initial contract proposal dated June 25, 1996. The only major gains made by the Union during the course of negotiations were to obtain a union-security and dues check-off clause, limited grievance rights for employees regarding merit wage increases, a conversion to the Teamsters' health insurance plan and language limiting subcontracting.

B. Did Respondent Unlawfully Fail and Refuse to Supply the Union Material Promised with Respect to Wages?

Respondent's initial proposal contained a proposal regarding wages which gave Respondent complete discretion over wage and merit increases. The proposal delineated the base starting wage as $8 per hour for custodial employees and $9 per hour for maintenance employees, which were lower wages than unit employees were earning at that time. As a practice, Respondent's board of trustees determined the amount of wage and merit increases to hourly employees and granted the wage and merit increases on July 1 of each year. While granting other hourly wage increases on July 1, 1996, and July 1, 1997, Respondent did not grant wage or merit increases to bargaining unit employees for each job classification. The parties maintained their respective positions with regard to wages until Feb-

[2] Luppachino's name is incorrectly spelled in the transcript as "Luachino." I direct that the transcript be changed to reflect the correct spelling.

ruary 1997, and made no progress in reaching any agreement regarding wages.

At the February 6, 1997, meeting, Respondent maintained its position, unchanged from its first proposals, that it retain sole discretion over wage increases by means of the following language:

> Should the Academy include in its annual budget funds for salary increases for all hour employees of the Academy, bargaining unit employees shall participate in any such across-the-board incremental increases effective July 1 of each year. In addition, bargaining unit employees may be eligible to receive an hourly rate increase or a lump sum adjustment to their salary based on their relative performance and seniority in the bargaining unit.

The Union proposed across-the-board wage increases for unit employees. Respondent held to its position that it have complete discretion over wages. Gilmartin asked LaPlante if he would be agreeable to a defined minimum wage for each employee for the next 3 years. From that amount, the Union would agree that Respondent could give merit raises so long as the Union had the right to grieve the merit component of the wage increases. According to Gilmartin, LaPlante said he was not opposed to this approach and would prepare a "fair and defined" wage progression and speak to his attorney about language for grieving merit increases. LaPlante testified that the Union requested some information on what the Respondent's wage proposal might mean for the unit employees over a period of time. He agreed to supply this information and after the meeting prepared a wage progression showing what unit wages would look like for an employee that worked there for 25 years before retiring.

The parties next met on February 10, at which time Respondent presented the Union with a table entitled "Bargaining Unit Wage Scale." The table reflected the minimum starting wage for the custodian and maintenance classifications. The starting wage proposed by Respondent for the custodial classification was $8 per hour and $9 per hour for the maintenance classification. The table projects the estimated wages of the two classifications for each year of service based on an average of 3.5 percent wage increases per year. Upon reviewing the table, the Union pointed out that while the starting wage for custodians on the table was to be $8 per hour, Respondent had just hired a custodian at $9.20. Noting that this was the lowest paid employee, the Union counter-proposed that the $9.20 should be the base wage for the custodian classification, and that the table should be reset starting at year 5.

Gilmartin and LaPlante then reviewed the wage scale. Gilmartin made notations on his copy of the wage sheet reflecting where the table should be reset to start with an "S," and where the table should end based upon the length of service of the most senior employee—11 years. LaPlante could not recall whether he saw the notations Gilmartin made to his copy of the progression. The parties discussed each unit employee and what their increases would be based on their length of service. According to Gilmartin, at the end of the meeting, LaPlante agreed to readjust the table so that the lowest rate would start at the $9.18 per hour level, or level 5 of the original table, and provide it to the Union at the next meeting. Gilmartin offered to type up the revisions, but, according to Gilmartin, LaPlante stated that, since the table was already on his computer, he would readjust the table. Gilmartin testified that LaPlante also agreed to provide the Union with proposed language regarding a limited grievance right for the Union to grieve merit wage increases. LaPlante testified that he could not recall if he made such an agreement. In his testimony, he denied ever promising to provide the Union with a revised wage progression as alleged by Gilmartin.

The next session was held on February 20. At the start of the meeting Gilmartin requested a copy of the revised table reflecting the minimum wage and wage projections for the custodian and maintenance classifications. According to Gilmartin, LaPlante denied having any knowledge of an agreement to draft a revised table and stated: "What are you talking about?" Gilmartin became upset and showed LaPlante his copy of the wage progression from the previous meeting, with Gilmartin's notes on it. According to Gilmartin, LaPlante replied that he didn't mean it.[3] According to LaPlante, he told Gilmartin that he "didn't know what he was talking about." I accept LaPlante's version of this meeting. Both parties agreed that Gilmartin then abruptly ended the meeting by telling LaPlante that the Union would be filing an unfair labor practice charge. LaPlante did not provide the language on limited grievance rights over merit reviews at this meeting.

The revised projected wage progression and proposed limited grievance rights for merit wage increases was not provided to the Union by Respondent until nearly 5 months later, on July 2. On that date, Respondent sent a letter proposing a grievance process for merit wage increases and attached the revised wage scale for discussion purposes. Thereafter, LaPlante returned to its initial position on wages. LaPlante testified that the first time he saw the wage progression sheet in question with Gilmartin's notes on them is when a copy of Gilmartin's sheet was given him in May, by a Board agent.

I credit LaPlante's testimony that he did not agree to provide the Union with a revised wage progression. As far as the record reflects, Gilmartin had the only copy of the wage progression which was marked with changes from the one provided by LaPlante. As LaPlante's wage progression was simply intended to show what would happen to an employee's wages assuming he or she worked 25 years and the Academy's board of trustees gave an annual wage increase, and was not a wage proposal in and of itself, there would be no purpose served by LaPlante supplying a revised progression. Not being a proposal, I do not find that LaPlante violated the Act by not supplying the revised progression. Clearly Gilmartin believed he had some kind of wage agreement at this point as evidenced by his angry exit from the February 20 meeting and his assertion for some time

[3] It is the Charging Party's position that the parties had reached an agreement on wages on February 10, 1997, which would include providing the revised wage scale. The complaint only alleges that Respondent agreed to provide a revised projected wage scale and proposed language on limited grievance rights regarding merit increases, and that Respondent unlawfully failed and refused to provide these items in violation of Sec. 8(a)(5) and (1) of the Act.

thereafter that a wage agreement had been made. I do not find that any such agreement was reached.

With respect to Respondent's failure to supply language for grievance procedure with respect to merit wage increases, as noted, LaPlante could not remember if he made a promise to supply such language. Respondent had already proposed language for a grievance procedure in its initial contract proposals which was still on the table. Gilmartin testified that the parties had agreed in November 1996 on the use of a grievance procedure to resolve any disputes arising under any agreement reached by the parties. Respondent did propose language for a grievance procedure with respect to merit wage increases in a letter dated July 1997 and the parties tentatively agreed to such language in August 1997. I do not believe the evidence supports the contention that Respondent's failure to supply language for a grievance procedure for merit wage increases violated the Act. I can find no request from the Union subsequent to the February 20 meeting and prior to a proposal on the subject by Respondent where the Union asked for such language, brings into serious doubt in my mind whether LaPlante ever offered to supply such language and whether if it was a serious matter to the Union during this timeframe. It is as if this matter became lost as a separate issue in the Union's overall assertion for a time that it had an agreement on wages. I certainly do not find that Respondent failed to provide this language as a means of frustrating negotiations and will recommend that this complaint allegation be dismissed.

C. Did Respondent Unlawfully Refuse to Meet with the Union for Negotiations from April 23 to June 12, 1997

The complaint alleges that Respondent violated Section 8(a)(5) and (1) by, from April 23 to June 12, failing and refusing to meet in face-to-face negotiations. Following the parties April 23 session, the Union, on April 29 faxed a request to schedule negotiation sessions. The Union repeated its request on April 30 and May 1. On May 1 LaPlante sent a letter to the Union stating that he was waiting to hear from legal counsel regarding his availability.

On May 6 the Union renewed its request to schedule a negotiation session. Receiving no response, the Union re-sent this request on May 7. On May 7 LaPlante faxed the Union a letter requesting its patience because he was spending his time defending the unfair labor practice charges filed by the Union.

On May 9 the Union re-sent its May 6 letter to the Respondent requesting dates to meet for negotiations. On that same date, LaPlante sent a fax to the Union indicating that Respondent could not meet because he was too busy defending the Respondent against NLRB charges filed by the Union. LaPlante indicated that after Respondent finished defending the charge, he would get back to the union to focus on a schedule for negotiations.

On May 12, by letter, the Union again requested to negotiate and provided the Respondent with nine dates through the end of May when the Union would be available and requested that the Respondent respond to its earlier requests for information. On May 14 and 15, after receiving no response from the Respondent, the Union sent the request again. On May 15 the Respondent re-sent LaPlante's May 9 letter in response to the Union's request to negotiate, again indicating that Respondent was too busy defending the charges filed by the Union with the NLRB to meet for negotiations.

By letter dated May 16, Respondent's new legal counsel, attorney Psarakis, informed the Union that he would be participating in the next negotiation session and requested the Union to contact him to discuss available dates. On May 19 Gilmartin sent a fax to Psarakis indicating that he was available on May 22, 23, 27, 28, 29, and June 3, 4, 5, 10, 11, and 12. On May 23, Psarakis mailed a letter to Gilmartin and chose June 12 as the acceptable date for resuming negotiations, because he was too busy with other negotiations to accept an earlier date.[4] On May 28 Gilmartin faxed a response to Psarakis and agreed to meet on June 12.

I agree with the position of Respondent that this hiatus in negotiations was caused in part by the actions of the Union, some legitimate and some questionable, and that Respondent's actions in this regard are not significant enough to qualify as a violation of the Act. Taking an overview of the negotiations, the record shows that the parties met in face-to-face negotiations on 36 separate occasions over a 15-month period. During this period, Respondent was faced with a number of information requests filed by the Union, to which it responded to most. It was also required to respond to unfair labor practice charges filed by the Union, and it hired an attorney to assist in negotiations, all of which took away from time available for face-to-face negotiations. The Union's activities away from the table during this timeframe also caused the Respondent to spend a great deal of time and effort, further lessening its ability to meet face to face.

To set the background for Respondent's actions during the relevant 7-week period, one must start with the negotiating session of April 6. At that meeting, the Union raised the topic of a video of a former maintenance employee of the Academy, in which the employee engaged in sexual acts on himself in the school gymnasium. Gilmartin also raised the issue of other sexual activities and scandals he claimed took place on campus, at following bargaining session on April 23, which LaPlante characterized as a "rough" session. At that session, Gilmartin also asked LaPlante about the rumors of sexual misconduct at the school which were "now hitting the newspapers." At that same session, Gilmartin informed LaPlante he knew the Academy was having legal problems. He then told LaPlante he "was appealing to [the Academy's] business sense, giving us the wages that [the Union] is requesting is going to be a lot cheaper than defending these lawsuits." Thus, Gilmartin clearly implied that there would be no lawsuits that would involve the Union's claim of sex scandals if a wage agreement was reached. LaPlante testified that Gilmartin then told him "at this point, negotiations are ended, it's now extortion.

Two days after the April 23 negotiating session, the Respondent received via fax a document entitled "News from the New Teamsters" for "Immediate Release." Shortly thereafter, the Union sent articles to the newspapers about "sexual crimes threatening Suffield Academy." Gilmartin also admitted he was

[4] There is nothing in the record to suggest that Psarakis was available at an earlier date.

contacted by a newspaper reporter. He told this reporter "the sending of news releases and the accusations of sexual crimes" at the Academy were "part of pressure in negotiations. In this news release, the Union accused the Academy of sexual crimes and misconduct, announced an appointment of Gilmartin as the head of the "Teamsters Ethical Practices Commission Unit" and invited students, parents and alumni to call a specific Teamsters' hotline set up by the Union.[5] The Union released this document to the press.

Several days later, the Union drafted and sent out a different news release. This second release again raised "the specter of sexual crimes [that] continues to haunt the prestigious Suffield Academy," discussed the "confirmation" of a rumored 1993 sexual assault at the school, omitted references to Gilmartin as the head of the "Teamsters Ethical Practices Commission Unit," did not mention the Teamsters' "hotline," and now invited persons to call an official "hotline" operated by the United Way of Connecticut and the State government. Following these newspaper releases, an editorial appeared in the *Hartford Courant,* soundly criticizing the Union's "smear tactics."

The Union also engaged in other activities that Gilmartin characterized as "part and parcel of collective bargaining negotiations" that were disruptive to the school. Gilmartin testified these activities included handing out balloons with the Teamsters' logo to students, distributing flyers congratulating students on graduation and sending a letter to the student's parents "describing the Academy's failure, in [the Union's] opinion to negotiate in good faith and requesting they contact the Headmaster to persuade him to reach an agreement with the Union. This letter also alerted the parents to alleged asbestos poisoning on campus. Gilmartin also testified that the Union enclosed several newspaper articles with this letter, one of which concerned an allegation that a teacher at the Academy was having sexual relations with a student. These actions all took place within the short time period between April 24 and May 7. The testimony reflects that the Academy was required to spend a great deal of time and effort responding to the Union's misinformation tactics, which Gilmartin testified were part of negotiations.

Though the Board has held that the pendency of unfair labor practices charges and the busy schedule of an employer's attorney do not relieve an employer of its duty to bargain, including bargaining at reasonable times, I do not believe that Respondent's failure to meet for the approximate 6-week period involved violates the Act. Respondent was not refusing to communicate with the Union as it complied with the information requests made by the Union during this period. Further, it was required to spend much time countering the accusations made by the Union, which are clearly not part of the bargaining process and in my opinion offer a valid reason for Respondent's delay in resuming face-to-face negotiations, in addition to the other factors which delayed such resumption. I will recommend dismissal of this complaint allegation.

[5] There was no evidence that such an "Ethical Practice Commission Unit" ever existed, or that such a hotline was ever set up.

D. Did Respondent Tentatively Agree to Accept the Union's Health Plan and Unlawfully Withdraw Such Agreement?

I have found in the two preceding sections of this Decision that Respondent did not violate the Act as alleged in the complaint. However, for reasons I can only speculate about, Respondent took actions after negotiations resumed in June 1997, which indicate a clear shift away from trying to reach agreement to a course of trying to frustrate the bargaining process. This shift away from bargaining in good faith can clearly be seen in Respondent's actions with respect to reneging on a major existing agreement and unilaterally subcontracting certain bargaining unit work. Its actions with respect to the health insurance matter will be discussed first.

As noted above, the first bargaining session was held on May 2, 1996, at which time the parties discussed the Union's full contract proposal, which the Union provided at this meeting. Respondent raised issues concerning the Union's grammar and word choice in the proposal. The parties met again on May 6, 13, 14, 21, and 30, 1996, without reaching any major agreement. At the May 14, 1996 meeting, the Union provided Respondent with a copy of the Teamsters' health plan and proposed contract language for providing unit employees with the "Teamster A Plus Health Insurance Plan." This language had not been included in the Union's prior proposals. LaPlante agreed to consider the insurance plan.

On June 25, 1996, after six meetings, the Respondent submitted its initial proposal for a contract. Regarding health insurance for unit employees, Respondent's initial proposal contained a provision which stated that Respondent "shall maintain for the employees of the bargaining unit the same insurance plans and options that are maintained for non-bargaining unit employees." Respondent's initial proposals contained a place for the parties to sign at the end of each contract article, once agreement had been reached. As noted earlier, Gilmartin did not agree to sign off on each individual section as it was not his practice to do so. The parties met on July 8 and 22, September 4, 12, and 23, and October 3, 13, and 15, 1996, but failed to reach agreement on any substantive issue.

On or about November 14, 1996, in an attempt to jump start negotiations which had not been significantly progressing from its perspective, the Union submitted a comprehensive counterproposal to Respondent, in which the Union withdrew many of its proposals and agreed to many of Respondent's proposals. The Union conceded to Respondent's positions regarding hours of work, sick leave language, military leave language, bereavement leave, grievance procedure (except for the definition of a grievance), health and safety, and the majority of the Respondent's layoff and recall language. In addition, the Union withdrew its proposal for the Teamsters' pension plan and agreed to the Respondent's proposal to maintain the Respondent's 401(k) plan. Lastly, the Union withdrew its proposals for funeral leave, sick time, and classification definition, and amended the holiday proposal.

At this November 14, 1996 session, the parties discussed the Union's proposed health insurance plan. Gilmartin testified without contradiction that LaPlante stated that he had reviewed the Union's plan and found it attractive, especially the fact that the Union's plan contained dental coverage and Respondent's

contribution would remain fixed for a 3-year period. The parties met on December 10 and 23, 1996, and again on January 13, 1997, without reaching any substantive agreement.

1. Agreement by Respondent to provide employees with the Teamsters' health plan.

At the January 14 bargaining session, LaPlante informed the Union that Respondent accepted the Union proposal to cover unit employees under the Teamsters' A-Plus health insurance plan. LaPlante explained to the Union why he was attracted to the plan. He said that he had reviewed the plan and compared the cost with Respondent's current plan and with other plans, and that he could not find another plan with so many benefits for the money. LaPlante also noted that the plan contained dental benefits.

Also significant to the Respondent's decision to agree to the Union's health insurance plan was the fact that the cost or contribution rate to Respondent would remain the same over the life of a contract, as opposed to the cost of Respondent's current insurance plan which would rise each year.

At the next session held January 20, 1997, Respondent presented the Union with a proposal which contained several small revisions to its previous proposals. The primary change in Respondent's proposal was the inclusion of language accepting the Teamsters' health insurance plan for unit employees. There is no dispute that the Respondent agreed to adopt this health plan, but a serious credibility determination must be made whether the Academy agreed to the language which the Union proposed for the health insurance provision in the collective-bargaining agreement.

On January 20, as was its practice for most of negotiations, the Academy presented a revised proposal that contained not only what it was proposing, but what it had agreed to. Under Article XVI, Insurance, it reads:

> "The Employer shall, for the term of this Agreement, contribute $3.25 per hour (up to a maximum of 40 hours per week) to provide Teamster A Plus plan for bargaining unit employees."

On January 22 the Union faxed to the Academy a 3-page list of items that the Union contended had been agreed to but left out of the Respondent's latest proposal. Also included in this fax was an item termed "Union Counter Proposal to Offer received 1/20/97." It reads: "Enclosed is Health and Welfare Standard Language discussed before. Note: Dates of contributions have to be changed." The language included in the fax was different in significant ways from the language that was included in the Union's previous health and welfare proposal.[6] Gilmartin testified that he faxed this language as he believed that LaPlante had inadvertently left out the language.

Gilmartin testified that at the next meeting between the parties, held January 23, LaPlante told him that he had simply not had time to put the health and welfare language in his computer program and that such language would be included in the next revision of the Employer's proposal. Gilmartin's copy of the Academy's January proposal has handwritten on the insurance article, "Change—what about language." I do not credit Gilmartin's testimony with respect to the matter of the health and welfare language nor his testimony that LaPlante consistently said that he had failed to include health and welfare language in his computer. I credit instead LaPlante's contention that he and the Respondent never agreed to any language with respect to the health insurance plan other than that contained in Respondent's January 20, 1997 revision. Indeed I find it significant that Gilmartin characterized the language proposal faxed to LaPlante as a "counter-proposal," and I believe that accurately describes what it was.

Also at the January 23 meeting, the parties discussed a dues check-off provision for the contract. Respondent refused to agree to a dues check-off, giving as a reason for this position the cost to Respondent to make deductions from employees' paychecks. Gilmartin informed LaPlante that since the Union's health insurance was fully funded by Respondent there was no longer a cost to Respondent for deducting the employees' contribution for Respondent's health plan, and thus there would be no additional cost to Respondent for deducting dues. It would be, in effect, a wash.

Significantly, every revised contract proposal provided by Respondent from January 20 to July, contained its agreement to provide unit employees with the Teamsters' health plan, and did not contain any other language related to the insurance plan. There were a total of four revised proposals provided to the Union by Respondent, dated February 18, March 19, April 14, and April 24 (presented to the Union on June 12). The last such proposal was signed in part by the Union on July 17 and by Respondent on July 23, to reflect tentative agreements.

The parties met again on February 6, 10, and 20. These sessions focused primarily on discussions about wages.[7]

On March 4, 1997, Gilmartin sent a fax to LaPlante outlining 25 open issues to discuss at the next meeting. Gilmartin listed the remaining open issues in the left hand column and the Union's proposal regarding the open issues in the right hand column. Health insurance for bargaining unit employees is not listed as an open issue, consistent with Respondent's agreement to provide the Teamsters' health plan to these employees.

The parties met again on March 10, and discussed the open issues listed in Gilmartin's March 4 fax. As Respondent's last revised set of proposals did not include health and welfare language, Gilmartin testified that he asked LaPlante about the omission of the language. According to Gilmartin, LaPlante told the Union that he inadvertently had left the language out, but that it would get done. Gilmartin further testified that LaPlante added that it was his fault that the language was left out, but that he meant nothing by it. As noted above, I do not credit this line of testimony by Gilmartin. The parties also met on March 12, and April 7, and continued to discuss the open issues contained in the March 4 fax.

[6] Gilmartin testified that his secretary could not find the health and welfare language that had been included in the Union's November 14, 1996 proposal, so she took the health and welfare language from a different contract and included that language with the fax.

[7] These sessions are discussed in more detail in the section of this decision dealing with Respondent's alleged failure to supply the Union a revised schedule of projected wage increases and with proposed contractual language relating to merit wage increases.

On March 19, and April 14, the Respondent presented the Union with revised proposals. The proposals contained Respondent's agreement to provide the bargaining unit employees with the Teamsters' health plan, but again did not include the language which accompanied the insurance proposal in the Union's set of proposals. In response to this proposal, the Union sent a fax to LaPlante on April 22, stating that any item not noted in the fax was thereafter withdrawn by the Union. Regarding the health insurance language, Gilmartin wrote, "Article 16, H & W (Health & Welfare) language previously submitted is enclosed and should become part of Article 16 as agreed."[8] Gilmartin testified that he again reminded LaPlante to put in the language because LaPlante had again failed to include the language in the latest revised proposals. I again do not credit this testimony.

The parties met on April 23, and the discussions did not focus on health insurance. On April 24, the Union faxed Respondent a copy of the health insurance language, noting, "as discussed, enclosed is health and welfare language previously presented (see 11/14/96 counteroffer) and agreed to." I do not believe an agreement had been reached and this fax was simply a self serving attempt to make it seems as if an agreement had been reached. Remember that Gilmartin made another "counteroffer" with respect to this language in January 1997. On April 28 Respondent provided a written form of its responses to the Union's counteroffer, which were presented by Respondent verbally at the April 23 meeting. Regarding article 16, health insurance, LaPlante wrote "the health and welfare proposal we included was deemed to be incomplete by you" and went on to state Respondent's position regarding each paragraph of the language. On May 6 the Union responded to the Respondent's fax of April 28. Gilmartin wrote, "re: H & W language, you have already agreed to this standard language. Please respond again in light of previous agreement." The Union received no response to this request until the parties met again for negotiations on June 12.

When the parties next met, on June 12, Attorneys Psarakis and Gizzi were present on behalf of Respondent. Although LaPlante was present at this meeting, Psarakis took over the role as Respondent's chief spokesperson. Respondent presented the Union with a revised proposal dated April 24. This revision contained Respondent's agreement to accept the Teamsters' health insurance plan, but did not include the Union's proposed language dealing with the plan. The parties reviewed the revised proposal so that Psarakis could be clear on where the parties stood at this point in negotiations. They then discussed the open issues, but did not reach any agreements.

At this point in negotiations, the only open issues concerned parttime and seasonal employees, a dues check-off clause, wages and maintenance of standards language. With respect to the health insurance, the Union communicated the position that the health insurance language was already agreed to by Respondent. Psarakis stated that he would review the Union's language and be prepared to discuss it at the next meeting.

The next meeting was June 9. Again the parties discussed the issue of the health and welfare language. Respondent again put forth its position on each paragraph of the health and welfare language.

2. Respondent's withdrawal of its agreement to provide the Teamsters' health insurance plan.

The parties met on July 23, and began the meeting by exchanging copies of Respondent's April 24 "Revised Proposal." Gilmartin and Psarakis had now signed each page reflecting which portions of the contract the parties had tentatively agreed to during the course of negotiations. Both Gilmartin and Psarakis signed "Article 16 Insurance" to reflect their agreement that Respondent would provide unit employees with the Teamsters' health insurance plan. The parties also noted under this article, "see Union 4/22/97 fax for open issues." This fax is one in which Gilmartin contended the Respondent had already agreed to the Union's insurance language.

During the first part of the July 23 meeting, Psarakis discussed Respondent's current position on specific paragraphs of the Union's health and welfare language. At the end of this discussion, Psarakis stated that he would send the Union proposed health and welfare language. Respondent then suggested a caucus. Respondent returned from the break and stated that it would set forth its so-called revised package proposal. Respondent then set forth its proposals on six issues. After having just signed the tentative agreement to provide unit employees with the Teamsters' health insurance plan, Psarakis told the Union that Respondent has just changed its position on participation in the Teamsters' plan and now wanted to continue to provide its own health insurance to the unit employees. Gilmartin testified that he was shocked and demanded to know if the Respondent were kidding. Psarakis replied that he was not kidding and Gilmartin became angry and the meeting ended.

Respondent did not offer any reason or justification for its sudden withdrawal from the tentative agreement, and Respondent's minutes of the meeting confirm this fact and I find that no explanation was offered at this meeting.[9]

On July 24 Respondent sent the Union a letter outlining its "revised contract proposals" as presented verbally at the meeting the day before. Once again, Respondent indicated its withdrawal from its agreement to provide unit employees with the Teamsters' health insurance plan. No reason, explanation nor justification for this position was offered. Despite this setback in negotiations, the Union on July 28 sent a counter offer in an attempt to settle the entire contract. The Union offered a

[8] It appears that the language was not actually enclosed with the fax, but was later provided to the Respondent by the Union. The language thus provided was the same language as in the November 1996 proposal and different from the language proposed in January 1997.

[9] These minutes support Gilmartin's version of the meeting and contradict a position letter given the Board by Respondent on October 20, 1997. In this letter, Respondent states: "The Academy explained to the Union that it would rather put the additional funds it would have to spend on the Teamsters' Plan for health insurance into immediate increased wages for bargaining unit employees." As more fully discussed at a later point, it was not until August 4, 1997, that Respondent modified its wage proposal-consisting solely of paying unit employees the same percentage wage increase that nonunit employees received in July 1996 to include pay increases for 1997 and 1998.

counter position with regard to the health and welfare language and agreed to delete some of the paragraphs to which Respondent had previously objected. Respondent continued to maintain its new position that it no longer agreed to provide unit employees with the Teamsters' health insurance plan.

During the remaining bargaining sessions of July 30, August 4, and August 26, the Union maintained its position that the parties had already had an agreement to provide the unit employees with the Teamsters' health insurance and the proposed language for insurance. Respondent maintained its postcaucus July 23 position that it would not provide the Teamster insurance plan. On July 30, in response to Gilmartin's notification to Respondent that the Union would file an unfair labor practice charge based upon Respondent's withdrawal from the tentative agreement on health insurance, Psarakis responded that "any agreements which the parties have signed to date are only tentative agreements pending agreement on the overall agreement."[10] At the same session, Psarakis stated that he could not discuss the Respondent's decision to withdraw from its agreement on health insurance because LaPlante was not present at the meeting.

The parties did discuss the relative costs of the Teamsters' plan and Respondent's existing plan at this meeting. Psarakis stated that Respondent's "cost for its current insurance plans will increase during the lifetime of the next Agreement . . . [and] reiterated that the Academy's position that it would rather put the additional funds it would have to spend for the Teamsters' health and welfare benefit plan into increased wages for bargaining unit employees."

In response to the Union's July 28 letter, on August 4, Psarakis faxed Respondent's counter proposals to Gilmartin. Psarakis stated that "the Academy maintains its position not to agree to the Teamster-Plus health and welfare benefit package." This is essentially because of substantial changes in its position as regards wages, and agreements to other union proposals. The Academy proposes to continue providing to maintain the current insurance plans in effect for the bargaining unit members. This letter marks the first time Respondent gave any type of reason for its sudden withdrawal from its agreement to provide the Union's health plan. This is also the first time that Respondent modified the monetary aspects of its wage offer, specifically, from that of offering unit employees the same wage increase that nonunit employees received in July 1996, to include wage increases effective July 1, 1997, "per the percentage increase as set by the Board of Trustees," and a minimum 2.5 percent increase for the third year of the contract.

[10] Respondent takes the position that it can withdraw from its agreement on health insurance because it was only tentative pending overall agreement. Nonetheless, in defense of its decision to subcontract, Respondent specifically relies on the fact that the parties had reached tentative agreement on the issue of subcontracting and therefore, under the language tentatively agreed to, Respondent had the right to subcontract. Apparently Respondent takes the position that it can pick and choose which tentative agreement it will adhere to based solely on its prerogative.

3. Conclusions

Respondent's reneging on its 7-month long commitment to provide the Union's health insurance plan to the unit employees is a clear act of bad faith bargaining by the Respondent. I agree with General Counsel that it is rare to encounter employer conduct so blatant as this: a critical issue is initialed off and "reagreed to" in the first part of a bargaining session occurring 32 negotiating sessions spanning 14 months, then after a caucus, is suddenly withdrawn, with no explanation.

The Board law is clear that the mere withdrawal of a tentative agreement is not a per se violation of Section 8(a)(5) of the Act, but is only one factor to consider in determining good or bad faith bargaining. *Merrill M. Williams,* 279 NLRB 82, 83 (1986). "In ruling on an allegation that a party has failed to bargain in good faith, it is well established that we look to the totality of circumstances reflecting the party's bargaining frame of mind. . . . We have previously declined to find employers who withdrew provisions on which tentative agreement had been reached during negotiations to have failed in their bargaining obligations when the employer's explanation for its retraction did not indicate a lack of good faith." Id. In *Williams,* the Board dismissed the complaint, specifically finding that the reason for the employer's retraction of its proposals regarding meal credits and wage increases was clearly explained to the union at the time of the retraction, the employer offered to open its books to the union to substantiate its position, and there was "no other indication that the Respondent was withdrawing from the agreements in order to frustrate the bargaining process or avoid reaching a contract." Id at 83.

Stated simply, the Board had held that the withdrawal of a proposal which had previously been agreed upon will be considered unlawful and designed to frustrate the bargaining process unless good cause is shown for the withdrawal. *Transit Service Corp.,* 312 NLRB 477, 483 (1993). In reaching this determination, the Board has held that although the reasons need not be totally persuasive, they must not be "so illogical as to warrant an inference that by reverting to these proposals [the party] has evinced an intent not to reach agreement and to produce a stalemate in order to frustrate bargaining." *Hickinbotham Bros. Ltd.,* 254 NLRB 96, 103 (1981).

In the instant case, Respondent simply withdrew its proposal on a critical issue without justification. This fact is undisputed. Respondent's typed version of the events of the July 23 bargaining session contain no mention of a reason given the Union for the withdrawal. It was not until 2 weeks later, in a letter dated August 4 that Respondent first suggested a reason: "because of substantial changes in its position as regards wages, and agreement to other Union proposals." Respondent's own words beg two obvious questions: had Respondent really offered "substantial changes in its position as regards wages," and had Respondent really agreed "to other Union proposals."

As to the critical issue of wages, Respondent essentially is arguing that it withdrew its agreement to convert to the Union's health plan in order to put more money in the hands of employees by sweetening its wage offer. But did Respondent in fact sweeten its wage offer? Gilmartin testified that he was well aware at this point in negotiations that Respondent had not changed its position with regard to wage increases for unit em-

ployees. The evidence reflects that Respondent had consistently proposed that it retain complete discretion over wage increases. Hence, there was no proposal by Respondent that reflected any increase in wages to unit employees. There is simply no support for Respondent's after the fact assertion that it could not afford the Union's health plan because it preferred to put more money in the hands of the unit employees by increasing their wages.

Respondent's August 4, 1997 letter, marked the very first time that Respondent ever modified the monetary aspects of its wage offer, i.e., by offering unit employees the same wage increase that nonunit employees received a year earlier, in July 1996, to include wage increases effective July 1, 1997, "per the percentage increase as set by the Board of Trustees" and a minimum of 2.5 percent increase for the third year of the contract. This amount of increase is no more than Respondent would have given the unit employees had they chosen not to organize. It is undisputed that Respondent gave 2.5 percent wage increases to its other nonunion hourly employees on July 1, 1996, and July 1, 1997. Further, as the parties' ultimate agreement regarding wages shows, wage increases for unit employees were also set at Respondent's historically average increase of 2.5 percent. It appears that the Respondent's motive for withdrawing its agreement to the Union's health plan was truly to frustrate the bargaining process. From the Union's perspective, the Respondent had withdrawn agreement to perhaps the most important issue in the minds of the unit employees, after the Union had ceased asking for almost everything else it had sought in bargain, just to receive the amount of increases Respondent historically gave its hourly employees.

Furthermore, Respondent has made no attempt to address the fact that the cost of the Teamsters' plan, while presently costing more than Respondent's existing plan, would remain fixed over the life of the contract, while the cost of the Respondent's plan would increase during this period. There is no showing that any money would actually be saved by Respondent by retaining its existing health plan rather than adopting the Teamsters' plan for its unit employees.

As to the second question raised by Respondent's August 4 letter, it bears noting that Respondent offered no evidence as to what Respondent's "agreement to other Union proposals" consisted of, nor how agreement to "other Union proposals," resulted in any additional monetary costs to Respondent. Though Respondent labeled its withdrawal from its prior agreement to take the Teamsters' health plan as part of a "revised package proposal," in its evidentiary presentation at hearing it could not point to a single significant change in position. Respondent's withdrawal came immediately after it had just signed a tentative agreement to the Teamsters' health plan. This withdrawal was given without reason, explanation and without any contemporaneous change in any of its positions on any remaining open issue. I believe and find that the sole motivation for withdrawing its previous acceptance of the Union's health plan was to frustrate the bargaining process and make it impossible to reach agreement on a contract, which at that point was close to being reached. Respondent cannot sustain a defense because it simply cannot show that it had the "good cause" required by the Board for the last minute change of heart. *Transit Service,* supra. There is absolutely no evidence that at any time in the days, weeks, or even months preceding the July 23 session Respondent ever advised the Union that agreement to the Teamsters' plan compromised or affected Respondent's ability to pay unit employees a long overdue wage increase.

Accordingly, in this regard, I find that Respondent was not bargaining in good faith and violated Section 8(a)(5) of the Act. Its subsequent act of unlawfully unilaterally subcontracting unit work further supports my belief that Respondent's true aim was to frustrate the bargaining process.

E. Did Respondent Unilaterally and Unlawfully Subcontract Bargaining Unit Work?

Respondent's initial proposal regarding the language concerning subcontracting was contained in the management's rights clause which gave the Respondent the right to:

> [D]etermine, change, and introduce new facilities, manner standards methods, means and number and qualifications of personnel for the conduct of the Academy's operations and business, including the right to subcontract or outsource any such operations and services.

The Union wanted to limit Respondent's absolute ability to subcontract and expressed concerns regarding the preservation of unit work. During negotiations, Respondent indicated, in light of the Union's concerns, that it would only subcontract work in emergency situations or if no member of the unit was qualified to perform the work, for example, snow removal or performing renovations that needed to be completed by a deadline for an Academy event.

Ultimately, the parties agreed to add language limiting the subcontracting language with the phrase, ". . . as long as it is not done to regularly evade this Agreement." In its April 14, 1997 revised proposal, Respondent agreed to add this limiting language. At the July 23, 1997 negotiating session, the parties initialed off on this agreement.

The parties met on July 30. At this point in negotiations, as noted above, the Respondent had withdrawn from its agreement to provide the Union's health plan. The parties, however, continued to negotiate the remaining open issues in the contract: language in article II regarding the recognition clause; maintenance of standards language in article II; a dues check-off provision; wages; merit increases; and a grievance procedure for merit increases and a zipper clause.

The parties had also agreed to a provision for second shift hours. Prior to the beginning of negotiations Respondent did not schedule second shift work and had cleaned Respondent's classrooms and administrative buildings during the day for years.

At the July 30 meeting, Respondent informed the Union that it intended to subcontract the second shift cleaning. Respondent indicated that it was considering subcontracting the cleaning and maintenance of Respondent's buildings at night. Respondent's prior practice with respect to this work was to have it performed by unit employees on the first shift. Respondent indicated that it was considering subcontracting in order to clean the offices and classrooms when they were unoccupied. Gilmartin responded by suggesting that Respondent hire a working foreman or faculty member to supervise a night crew

and told Respondent that there was a provision in the contract for a second shift.[11] Attorney Psarakis responded that the contract also provided Respondent with a right to subcontract and that unit employees were not willing to work on a second shift. Psarakis noted that Respondent asked unit employees if they were willing to work a second shift and only one employee responded affirmatively.[12] Gilmartin then asked if Respondent's proposal on subcontracting would affect Respondent's agreement in section B of the management-rights clause that it would not regularly evade the agreement by subcontracting. Psarakis responded that it did not affect its agreement in section B, but that Respondent was only raising this issue for discussion at the table. The parties then moved to discuss wages, maintenance of standards language, and the health insurance issue.

On August 5 the parties met and Respondent again raised the subcontracting issue. Psarakis again brought up Respondent's desire to subcontract unit work at night. The Union's position was that the parties already agreed that Respondent cannot subcontract services that will regularly evade the agreement, as per article III, section B. The Union stated its position that subcontracting cleaning and maintenance work at night would regularly evade the agreement and that the agreement already provided for a second shift. The Union explained the history of negotiations leading to the limiting language in the subcontracting section of the contract. Gilmartin told Psarakis that, "LaPlante was careful to state, in past negotiation sessions, that the Academy would subcontract services only in emergency situations or if no member of the bargaining unit was qualified to do the work." Psarakis stated he could not respond to Gilmartin as LaPlante was not present at negotiations. The parties then went on to discuss wages.

At the August 26 bargaining session, the conversation regarding subcontracting was basically identical to the conversation of August 5. Psarakis asked Gilmartin to consider the Respondent's subcontracting proposal and stated that respondent did not anticipate that the subcontracting would adversely affect any jobs of unit employees. Psarakis also stated Respondent's position that subcontracting work at night would not regularly evade the parties' agreement. Gilmartin stated that he refused to consider the proposal because it was the Union's position that subcontracting the work at night would regularly evade the agreement.

By the end of the August 26 session, the parties were in agreement over all of the terms of a collective-bargaining agreement with the exception of the health insurance issued, an item which the parties agreed to refer to the Board.

Respondent had begun soliciting bids from subcontractors for the night work in August. On or about September 1, Respondent began subcontracting out the cleaning of many of the main buildings at its facility. The work was given to a local nonunion employer. No unit employees were laid off as a result of the subcontracting.

It is well established that subcontracting is a mandatory subject of bargaining. *Torrington Industries,* 307 NLRB 809 (1992). The Board has held that *Torrington Industries* is applicable even when the subcontracting does not result in the loss of work for unit employees. *Acme Die Castings,* 315 NLRB 202, fn. 1 (1994). The transfer of work out of the unit is also a mandatory subject of bargaining. *Noblit Bros.,* 305 NLRB 329, 331 (1992) (the Board found employees engaged in a protected strike to seek return of unit work). As to any claim that the parties were at impasse or that the Union somehow waived its right to bargain about the subject of subcontracting, Board law is clear:

> When negotiations are not in progress, we can find a waiver of a union's right to bargain over a change in the unit employees' terms and conditions of employment on the basis of the union's failure to request bargaining if the union had clear and unequivocal notice of the proposed change and was given that notice sufficiently in advance of the implementation to permit meaningful bargaining. However, where, as here, the parties are engaged in negotiations, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to give notice and an opportunity to bargain; it encompasses a duty to refrain from implementation at all, unless and until an overall impasse has been reached on bargaining for the agreement as a whole.

Bottom Line Enterprises, 302 NLRB 373, 374 (1991).

See also *RBE Electronics of S.D.,* 320 NLRB 80, 81 (1995), in which the Board recognized only two exceptions to the duty to refrain from unilateral action: "economic exigencies" and when a union engages in delaying tactics. In the instant case there is no evidence to support either exception, as Respondent offered no evidence of economic emergency, and there is no evidence that the Union delayed bargaining.

Respondent did not give the union sufficient notice of its intention to subcontract the classroom cleaning work as evidenced by its own detailed notes of the relevant sessions reveal that no agreement was reached on the subject. Counsel for General Counsel and counsel for Respondent offered as joint exhibits Respondent's typewritten notes of the July and August bargaining sessions. The subcontracting issue was first raised at the July 30 meeting, then again at meetings on August 5 and 26. According to the minutes of the July 30 meeting, Psarakis raised the issue of subcontracting the cleaning of Respondent's buildings at night, explained the reasons behind the idea, and concluded the discussion when he "stated that this proposal did not affect what the Academy had agreed to in section B, but that the Academy was only raising this issue for discussion at the table."

Respondent again raised the issue at the August 5 meeting. Its notes reveal that the parties continued to disagree as to whether Respondent's proposal to subcontract the cleaning work at night would "regularly evade the agreement." As previously noted above, the parties had reached a tentative agreement by that date concerning subcontracting generally. The tentative agreement allowed Respondent to subcontract unit

[11] In hiring the subcontractor, Respondent employed a working supervisor for the night shift cleaning crew.

[12] Gilmartin testified that Respondent posted a bid for a second shift position; three employees signed the bid sheet and the bid was won by the most senior employee.

work "as long as it does not regularly evade the bargaining agreement." As Respondent's notes and the relevant testimony clearly reveal, the parties had agreed on the language governing the Respondent's right to subcontract under limited circumstances: when such subcontracting did not "regularly evade the Agreement." Here, it seems apparent that the parties disagreed on whether this particular idea of Respondent's would violate the contractual clause, as the notes reveal that "[t]he parties concluded discussions of the issue without reaching agreement." Thus, while it appears that the parties had reached yet another tentative agreement on language, there was a dispute as to whether this particular proposal would in fact violate that language. Since there was not "meeting of the minds" on the matter, Respondent was not free to unilaterally implement its idea, absent a lawful impasse or a waiver on the Union's part.

As the Board has repeatedly observed, an employer cannot implement a proposal when negotiations are in progress until an overall impasse has been reached on bargaining for the agreement as a whole. *Bottom Line Enterprises,* supra; *RBE Electronics of S.D., Inc.,* supra. In light of Respondent's serious unfair labor practice of reneging on its agreement to provide the Teamsters' health insurance, Respondent was not privileged to declare "impasse" and take unilateral action. Since a claim of impasse is precluded by the fact that the conduct occurred in the conduct of other unremedied unfair labor practices, the only possible defense for Respondent is waiver by the Union.

Here there can be no waiver for the simple reason that the parties clearly disagreed on implementation on the proposal, which, as Respondent's notes reveal, was framed each time as merely a proposal, rather than a certainty. The Union strenuously objected to the "proposal;" the Respondent went ahead and implemented it anyway. Respondent's defense fails for another reason as well; assuming *arguendo* that the parties did have a substantive agreement on subcontracting language, Respondent was not free to pick and choose which of the tentative agreements it liked and simply implement its own interpretation of such agreement. Yet that is precisely what Respondent has done here. It has unilaterally adopted its version of the agreed-upon limited right to subcontract, while ignoring the other tentative agreements it evidently has no use for, such as dues check off and others.

I believe that Respondent's view of collective bargaining is typified by this statement in a position letter it supplied General Counsel on October 20, 1997: "Thus, either party was free to rescind tentative agreements at any time until the final contract was signed, as negotiations are a product of give and take." As demonstrated above in the statement of law on this subject, the first part of Respondent's statement is too broad, and under the facts of this case plainly erroneous. The second part of Respondent's statement is quiet true—negotiations are a product of give and take—by the evidence in this case portrays an employer who fails to appreciate the "give" part and wishes only to ''take."

Notably, in the very same position statement, Respondent admits its propensity to pick and choose which tentative agreements it will implement or rescind. Regarding subcontracting, Respondent submits, "On July 23, the Employer tentatively agreed to include language in the contract regarding its right to subcontract work of unit employees `as long as it is not done to regularly evade the agreement.' Not only has the Academy made such an agreement, but it is also implementing such agreement.[13] Contrast this position with Respondent's position on its right to rescind its agreement to accept the Teamsters' health plan, also tentatively agreed to on July 23, along with the cited language regarding subcontracting.

For all the reasons set forth above, I find that Respondent unilaterally subcontracted bargaining unit work on or about September 1, absent a lawful impasse, in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent Suffield Academy is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union, International Brotherhood of Teamsters, Local Union 559, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(1) and (5) of the Act by:

(a) Failing and refusing to bargain in good faith with the Union by withdrawing its tentative agreement to accept the Union's health insurance plan.

(b) Failing and refusing to bargain in good faith with the Union by unilaterally subcontracting bargain unit work absent a lawful impasse in negotiations.

4. Respondent did not violate the Act in the other ways alleged in the complaint.
5. The unfair labor practices committed by Respondent are unfair labor practices affecting commerce with the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The normal remedy in a case where Respondent has been found to have failed and refused to bargain in good faith is to restore the status quo as it existed prior to the Respondent's unlawful conduct and order it to, upon request, bargain in good faith. In the instant case, as it appeared that an overall agreement could finally be reached, Respondent withdrew its agreement on health insurance, conduct which in conjunction with its unlawful unilateral subcontracting of unit work effectively has stymied further talks between the parties. The usual remedy of simply ordering the parties back to the bargaining table, without more, will in reality render future talks meaningless, as Respondent is clearly opposed to simply restoring its agreement to provide the Union's health insurance plan to unit employees,

[13] For the record, I totally disagree that the subcontracting language which Respondent relies upon would allow the degree of subcontracting it has engaged in. Right to subcontract was sought by Respondent to cover emergency situations or one's that would not reoccur regularly. Subcontracting out on an annual basis the regular bargaining unit work of cleaning of classrooms is clearly not an emergency and equally clearly would "regularly evade the agreement."

a concept it had willingly embraced from January 1997, until the latter half of the bargaining session of July 23, 1997.

Thus, it seems clear "that merely ordering Respondent to resume bargaining in good faith, without more, will permit Respondent to continue to withhold from the bargaining table the proposal that it illegally retracted . . . such a result will not effectuate the policies of the Act, but will allow Respondent to profit from its unlawful conduct." *Mead Corp.,* 256 NLRB 686 (1981). The instant case falls squarely with the *Mead Corp.* rationale for requiring this special remedy. In this case the status quo ante is best achieved by returning the parties to the positions they occupied before Respondent unlawfully revoked the health and welfare agreement. As in *Mead Corp.,* here there is no evidence at all that this remedy will harm or cause any undue burden on Respondent; in fact, the reverse is much more likely—ordering this remedy will promote the statutory purpose of encouraging good-faith bargaining and, as an added benefit for Respondent, the Union's health plan will likely save Respondent money over the long run.

Moreover, as in *Mead Corp.,* here the withdrawal of a proposal on a key issue came at a critical time in the negotiations, obstructed meaningful bargaining, and frustrated the making of a contract. "A mere affirmative order that Respondent bargain upon request will not eradicate the effects of its unlawful retraction of the proposal." Id. at 687. Based upon all of the above, I recommend that Respondent be ordered to restore to its overall package proposal the tentative agreement it had signed on July 23, 1997, to provide the Union's health plan to unit employees,[14] to cancel and rescind the subcontract or agreement concerning the cleaning of Respondent's offices as described above, and to engage, upon request, in good-faith bargaining with the Union.

It is further ordered that the bargaining period is hereby extended for a period of 6 months from the resumption of good-faith bargaining in accord with *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Suffield Academy, of Suffield, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union by withdrawing from its agreement to accept the Union's health insurance plan for unit employees.

(b) Failing and refusing to bargain in good faith with the Union by subcontracting unit work without affording the Union an opportunity to bargain over this issue and without reaching lawful impasse in negotiations.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action

(a) Restore its agreement to accept the Union's health plan to its proposal for a collective-bargaining agreement.

(b) Upon request, bargain in good faith with the Union, in the unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement:

> All full-time and regular part-time service and maintenance employees employed by Respondent at its facility; but excluding cafeteria employees, office clerical employees, and guards, professional employees and supervisors as defined in the Act.

(c) The bargaining period is extended for a 6-month period beginning with the resumption of good-faith bargaining.

(d) Within 14 days after service by the Region, post at its facility in Suffield, Connecticut, copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 17, 1997.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 22, 1998

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

[14] I recommend that Respondent be ordered only to restore the language Respondent, in writing, on July 23, 1997, clearly agreed to before it reneged and withdrew that agreement. As to the underlying language detailing the terms of the Union's health plan, the parties are certainly free to resume negotiations on these points.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain in good faith with the International Brotherhood of Teamsters, Local Union 559, AFL–CIO, by withdrawing from its agreement to accept the Union's health insurance plan for our employees in the following described unit:

All full-time and regular part-time service and maintenance employees employed by Respondent at its facility; but excluding cafeteria employees, office clerical employees, and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT fail and refuse to bargain in good faith with the Union by subcontracting unit work without affording the Union an opportunity to bargain over this issue and without reaching lawful impasse in negotiations.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL restore our agreement to accept the Union's health plan to our proposal for a collective-bargaining agreement.

WE WILL upon request, bargain in good faith with the Union, in the unit described above with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL extend the period for bargaining for 6 months beginning with the resumption of good-faith bargaining.

SUFFIELD ACADEMY